

July 16, 2002

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2d Floor
Boston, MA 02110

RE: Application of Harvard Dedicated Energy Limited,
pursuant to G.L. c. 164, § 1F and 220 CMR 11.00, et. seq.

Dear Secretary Cottrell:

On June 18, 2002, the Department issued a Request for Comments about the above-referenced Application of Harvard Dedicated Energy Limited ("HDEL"), pursuant to G.L. c. 164, § 1F and 220 CMR 11.00 et. seq. for a Competitive Supplier License and Petition for Waiver of Certain Competitive Supplier Licensing Regulations ("Application"). This letter provides the initial comments of the Massachusetts Division of Energy Resources ("DOER") in response to the HDEL Application.

While DOER is not taking a position on whether HDEL should ultimately be granted the requested waivers, we feel compelled to point out that the Application is materially lacking in detail, such that a meaningful, substantive assessment is not possible at this time. The following examples will illustrate this defect.

The Application begins with a description, stating that, as a licensed competitive supplier, HDEL would serve the President and Fellows of Harvard College, the corporate parent of HDEL, and Harvard's affiliates. While this provides some basis for identifying the "customers" to be served, it fails to identify all of Harvard's current affiliates and it fails to state whether this is limited in time or whether other "affiliates" may be added. This ambiguity is complicated by the next sentence, which contradicts the sentence immediately preceding it by including two non-affiliated entities; the Holyoke Center and the Inn at Harvard.¹ It is not at all clear to DOER who actually comprises the entity

¹ Further into the filing, at page 4., HDEL identifies still another entity; a portion of Rosovsky Hall and two M.D.C. lighting arrays that would be served.

proposed to be licensed as a competitive supplier and who is encompassed in the “customer group.”²

The Application goes on to state, at page 3., that Harvard has determined that being a retail customer, rather than a licensed competitive supplier or a load-serving entity, puts it at a disadvantage for buying competitive supply. However, the Application fails to explain why Harvard, as a large and sophisticated customer, is so “disadvantaged” that it can not competitively procure its electricity supply, without becoming a licensed competitive supplier itself.

The Application also states that the size and nature of Harvard’s operations result in Harvard having many of the characteristics of a wholesale purchaser of electricity. That being the case, has Harvard explored going directly to the wholesale market, joining NEPOOL, becoming an LSE in its own right? The Application is silent about this or any other alternative to competitive supplier licensing, and includes within that Application a request for significant deviations from the statutory and regulatory obligations undertaken by licensed competitive suppliers.

The paucity of detail about the entity applying for a license, who the customer will be, and why Harvard cannot procure a competitive supply from the competitive market; makes any substantive review of the Application problematic. This lack of significant detail is compounded by the scope of waivers requested by HDEL, which appear to give HDEL all of the benefits of the competitive market without the associated obligations and requirements of disclosure relative to labor characteristics, consumer protection, environmental protection, and information sharing requirements.³ The potential for impairing competition, and for establishing a dangerous precedent that could serve to inhibit further competition, is inherent in this waiver request.

DOER is also troubled by the conclusory assertions proffered by the Application that Harvard cannot procure a competitive supply and that it is effectively impaired by being a customer in the retail market. The lack of any explanation about this impairment, coupled with the clear competitive advantage being requested by HDEL, makes any approval of this Application without further, substantive information, problematic. The Application also raises several other significant questions; e.g. what are the effects, costs, etc., attendant to HDEL’s complying with the disclosure requirements imposed on the competitive market at large? Why is HDEL sui generis from other large, sophisticated end-users?

DOER believes the following information must be provided by HDEL prior to the Department making a final decision concerning the Application: (1) HDEL must identify

² For example, on page two of the filing, HDEL identifies, in addition to its facilities at the Cambridge campus, a series of other facilities in Allston, Southborough, Watertown, Petersham, Concord, Bedford, and Somerville.

³ HDEL fails to address some basic statutory issues raised by a putative “waiver” of information and disclosure requirements. While the DTE may, for good cause shown, suspend application of some of its implementing regulations, it cannot suspend the fundamental information and disclosure requirements prescribed by G.L. c. 164, § 1F.

the relevant components of the entity to be licensed, (2) HDEL must describe the class of customer(s) to be served, and (3) HDEL must provide a more complete explanation about why it seeks to suspend the fundamental obligations of a competitive supplier with respect to information disclosure, labor characteristics, and environmental compliance..

DOER urges the Department to require full and complete responses to these questions and data gaps by HDEL and to afford an opportunity for public comment after full and complete information is provided by HDEL to the Department.⁴

DOER thanks the Department for this opportunity to comment and for its consideration of these initial comments.

Respectfully submitted,

Carol R. Wasserman
Deputy General Counsel

⁴ DOER would also like to make the point that any waiver from certain legal obligations the Department may grant has no effect upon the statutory and regulation responsibilities with which all licensed competitive suppliers must abide; e.g. obligations concerning DOER Market Monitoring, obligations concerning unfair and deceptive trade practices enforced by the Office of the Attorney General.